

AMENDED IN SENATE APRIL 25, 2005

AMENDED IN SENATE APRIL 20, 2005

SENATE BILL

No. 422

Introduced by Senator Simitian

February 17, 2005

An act to amend Sections 116.240 and 116.940 of, and to add Sections 116.221, 116.222, ~~116.223~~, and 116.232 to, the Code of Civil Procedure, relating to small claims court.

LEGISLATIVE COUNSEL'S DIGEST

SB 422, as amended, Simitian. Small claims court: jurisdiction.

(1) Existing law specifies that the jurisdiction of the small claims court includes various actions in which the demand does not exceed \$5,000, with specified exceptions.

This bill would increase ~~the~~ *the* small claims court jurisdiction over actions brought by a natural person, if the amount does not exceed \$7,500, with specified exceptions. The bill would also require, in small claims court actions to enforce the payment of a debt, that the statement of calculation of liability separately state the original debt, and other payments to the debt, as specified. The bill would increase the filing fee for cases in which the jurisdictional limit exceeds \$5,000 to \$25, as specified, with the increase in fees to be used for advisory services ~~and translator services~~.

(2) Existing law authorizes small claims court cases to be heard by temporary judges who are members of the State Bar, and who are sworn and empowered to act in this capacity.

The bill would require temporary judges, prior to serving in small claims court, to take a course of study, offered by the Department of Consumer Affairs, covering specified state, *and* federal, ~~and local~~ laws.

(3) Existing law requires each small claims court advisory service, offered without charge to litigants and potential litigants, to provide individual personal advisory services, in person or by telephone, and by any other means reasonably calculated to provide timely and appropriate assistance.

This bill would require the topics covered by individual personal advisory services to include preparation of small claims court filings, filings, procedures, including procedures related to the conduct of the hearing, collection of small claims court judgments, and information about the availability of ~~translation~~ *interpreter* services. ~~The bill would also require the small claims court, in counties with a substantial number of non-English speaking people, as defined, to designate at least 2 court days per month for a court-paid translator to be present, and would require the court to provide notice of the translation service.~~ The bill would include related findings and declarations of the Legislature.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. (a) The Legislature finds and declares all of the
2 following:

3 (1) The quality of and access to justice in small claims court in
4 California varies widely from jurisdiction to jurisdiction. The
5 small claims court system should be improved in the following
6 ways:

7 (A) Commissioners and ~~judges pro tem~~ *temporary judges*
8 adjudicate many complex issues including, but not limited to,
9 consumer law, ~~landlord-tenant law, rent control~~ *rent deposit* law,
10 tort law, and contract law. In its report to the Judicial Council on
11 the California three track civil litigation study, Consumers Union
12 maintains that paid court commissioners, “see the full panoply of
13 issues raised in small claims cases, and part of their job is to
14 become knowledgeable in the areas of law likely to arise in small
15 claims court. Further, they have the time and duty to research
16 issues of law likely to arise in small claims court...[and those]
17 that arise with which they are not familiar.” The potential
18 knowledge gap between ~~judges pro tem~~ *temporary judges* and

1 commissioners should be narrowed through better and timely
2 training.

3 (B) For advisors, improvements need to be made in the
4 availability of in-person assistance and in the knowledge and
5 experience of the advisors.

6 (C) Qualified ~~translators~~ *interpreters* are not available in many
7 jurisdictions in California. With the increasing ~~ethnic~~ *linguistic*
8 diversity in California's population in recent decades, the need
9 for ~~translation~~ *interpreter* services has grown proportionately.

10 (b) (1) It is the intent of the Legislature to raise the
11 jurisdictional limit for natural persons only.

12 (2) It is the intent of the Legislature that the jurisdictional limit
13 of subdivision ~~(b)~~ *(a)* of Section 166.231 of the Code of Civil
14 Procedure and subdivision (c) of Section 116.220 of the Code of
15 Civil Procedure shall not be changed by this legislation.

16 (3) It is the intent of the Legislature that jurisdictional limits
17 shall not be raised again, particularly with respect to individuals
18 as defendants, until services are funded at a level sufficient to
19 provide all of the following:

20 (A) In-person advice from advisors who are legal
21 professionals.

22 (B) Staffing levels that are adequate to meet the demand, and
23 also adequate to permit the small claims court advisory service to
24 provide services to both parties in a small claims court case
25 without conflicts of interest.

26 ~~(C) Professional, trained decision makers in counties~~
27 ~~choosing to raise the limits.~~

28 ~~(D)~~

29 (C) Professional, well-trained decision makers, in small claims
30 courts in all counties in California, who meet standards
31 established by the Judicial ~~Council~~.

32 ~~(E) Translation services to the same degree as in superior court~~
33 ~~in each county. Council.~~

34 (D) *Interpreter services shall be made available to*
35 *non-English speaking litigants.*

36 (4) It is the intent of the Legislature that commissioners and
37 ~~judges pro tem~~ *temporary judges* should be knowledgeable of
38 state and federal consumer laws, ~~landlord-tenant laws, along with~~
39 ~~any applicable county specific laws or ordinances~~ *rent deposit*
40 *law*, the state and federal Fair Debt Collection Practices Acts, the

1 federal Truth in Lending Act, the federal Fair Credit Billing Act,
2 the federal Electronic Fund Transfer Act, tort law, online
3 purchasing law and other contract law, defenses to contract
4 claims, and defenses to debts.

5 SEC. 2. Section 116.221 is added to the Code of Civil
6 Procedure, to read:

7 116.221. In addition to the jurisdiction conferred by Section
8 116.220, the small claims court has jurisdiction in an action
9 brought by a natural person, if the amount of the demand does
10 not exceed seven thousand five hundred dollars (\$7,500), except
11 for actions otherwise prohibited by subdivision (c) of Section
12 116.220 or subdivision (b) of Section 116.231.

13 SEC. 3. Section 116.222 is added to the Code of Civil
14 Procedure, to read:

15 116.222. If the action is to enforce the payment of a debt, the
16 statement of calculation of liability shall separately state the
17 original debt, each payment credited to the debt, each fee and
18 charge added to the debt, each payment credited against those
19 fees and charges, all other debits or charges to the account, and
20 an explanation of the nature of those fees, charges, debits, and all
21 other credits to the debt, by source and amount.

22 ~~SEC. 4. Section 116.223 is added to the Code of Civil~~
23 ~~Procedure, to read:~~

24 ~~116.223. (a) In a county with a substantial number of~~
25 ~~non-English speaking people, as defined in Section 7296.2 of the~~
26 ~~Government Code, the small claims court shall designate at least~~
27 ~~two court days per month for a court-paid translator to be present~~
28 ~~and shall notify the commissioners and judges pro tem of those~~
29 ~~designated days.~~

30 ~~(b) Notice of translation services shall be posted in the court's~~
31 ~~office and printed in Spanish and other languages in which~~
32 ~~translation services are provided. The notice shall state that~~
33 ~~translation services will be available on designated days and that~~
34 ~~any party has the right to request the setting of his or her case for~~
35 ~~a day on which translation services are available.~~

36 ~~SEC. 5.~~

37 SEC. 4. Section 116.232 is added to the Code of Civil
38 Procedure, to read:

39 116.232. (a) The filing fee for cases in which the
40 jurisdictional limit exceeds five thousand dollars (\$5,000) shall

1 be twenty-five dollars (\$25). The five dollar (\$5) increase above
2 the filing fee set forth in subdivision (a) of Section 116.230 shall
3 be used to enhance advisory services ~~and translator services.~~

4 (b) This fee increment shall supplement, not replace, existing
5 funding sources for advisory services.

6 (c) Notwithstanding the provisions of this section, the law
7 library fee in effect in the jurisdiction in which a small claims
8 case is filed shall be applicable to all civil filings in which the
9 plaintiff's claim is five thousand dollars (\$5,000) or more.

10 ~~SEC. 6.~~

11 *SEC. 5.* Section 116.240 of the Code of Civil Procedure is
12 amended to read:

13 116.240. (a) With the consent of the parties who appear at
14 the hearing, the court may order a case to be heard by a
15 temporary judge who is a member of the State Bar, and who has
16 been sworn and empowered to act until final determination of the
17 case.

18 (b) Prior to serving as a temporary judge in small claims court,
19 and at least every three years thereafter, each temporary judge
20 shall take the course of study, ~~which shall be offered by the~~
21 ~~Department of Consumer Affairs. The course shall include, but~~
22 ~~not be limited to, state and federal consumer laws,~~
23 ~~landlord-tenant law along with any applicable county specific~~
24 ~~laws or ordinances rent deposit law, the state and federal Fair~~
25 ~~Debt Collection Practices Acts, the federal Truth in Lending Act,~~
26 ~~the federal Fair Credit Billing Act, the federal Electronic Fund~~
27 ~~Transfer Act, tort law, contract law, including defenses to~~
28 ~~contracts and defenses to debts.~~

29 ~~SEC. 7.~~

30 *SEC. 6.* Section 116.940 of the Code of Civil Procedure is
31 amended to read:

32 116.940. (a) Except as otherwise provided in this section or
33 in rules adopted by the Judicial Council, which are consistent
34 with the requirements of this section, the characteristics of the
35 small claims advisory service required by Section 116.260 shall
36 be determined by each county in accordance with local needs and
37 conditions.

38 (b) Each advisory service shall provide the following services:

39 (1) Individual personal advisory services, in person or by
40 telephone, and by any other means reasonably calculated to

1 provide timely and appropriate assistance. The topics covered by
2 individual personal advisory services shall include, but not be
3 limited to, preparation of small claims court filings, procedures,
4 including procedures related to the conduct of the hearing,
5 collection of small claims court judgments, and information
6 about the availability of ~~translation~~ *interpreter* services.

7 (2) Recorded telephone messages may be used to supplement
8 the individual personal advisory services, but shall not be the sole
9 means of providing advice available in the county.

10 (3) Adjacent counties may provide advisory services jointly.

11 (c) In any county in which the number of small claims actions
12 filed annually is 1,000 or less as averaged over the immediately
13 preceding two fiscal years, the county may elect to exempt itself
14 from the requirements set forth in subdivision (b). This
15 exemption shall be formally noticed through the adoption of a
16 resolution by the board of supervisors. If a county so exempts
17 itself, the county shall nevertheless provide the following
18 minimum advisory services in accordance with rules adopted by
19 the Judicial Council:

20 (1) Recorded telephone messages providing general
21 information relating to small claims actions filed in the county
22 shall be provided during regular business hours.

23 (2) Small claims information booklets shall be provided in the
24 court clerk's office of each superior court, the county
25 administrator's office, other appropriate county offices, and in
26 any other location that is convenient to prospective small claims
27 litigants in the county.

28 (d) The advisory service shall operate in conjunction and
29 cooperation with the small claims division, and shall be
30 administered so as to avoid the existence or appearance of a
31 conflict of interest between the individuals providing the
32 advisory services and any party to a particular small claims
33 action or any judicial officer deciding small claims actions.

34 (e) Advisors may be volunteers, and shall be members of the
35 State Bar, law students, paralegals, or persons experienced in
36 resolving minor disputes, and shall be familiar with small claims
37 court rules and procedures. Advisors may not appear in court as
38 an advocate for any party.

39 (f) Advisors, including independent contractors, other
40 employees, and volunteers have the immunity conferred by

- 1 Section 818.9 of the Government Code with respect to advice
- 2 provided as a public service on behalf of a court or county to
- 3 small claims litigants and potential litigants under this chapter.

O